

This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.

Timothy Elmore v. Snap-on, Inc

Case Number	49D02-2011-CT-041323
Court	Marion Superior Court 2
Type	CT - Civil Tort
Filed	11/20/2020
Status	11/20/2020 , Pending (active)

Parties to the Case

Defendant Snap-on, Inc

Address

2801 80th Street
Kenosha, WI 53143

Attorney

Parwana Noorzad
#2941249, Retained

QUARLES & BRADLEY LLP
135 N. Pennsylvania St.
BMO Building Suite 2400
Indianapolis, IN 46204
317-957-5000(W)

Plaintiff Elmore, Timothy

Address

1305 E. Markwood Ave
Indianapolis, IN 46227

Attorney

Robert David Epstein
#672649, Lead, Retained

50 South Meridian Street
Suite 505
Indianapolis, IN 46204
317-639-1326(W)

Attorney

Joseph Alan Beutel
#3508549, Retained

50 S Meridian Street
Suite 505
Indianapolis, IN 46204
317-639-1326(W)

Chronological Case Summary

11/20/2020 **Case Opened as a New Filing**

11/20/2020 Appearance Filed

Appearance

For Party: Elmore, Timothy
 File Stamp: 11/20/2020

11/20/2020 Subpoena/Summons Filed

Summons

Filed By: Elmore, Timothy
 File Stamp: 11/20/2020

11/20/2020 Complaint/Equivalent Pleading Filed

Complaint

Filed By: Elmore, Timothy
 File Stamp: 11/20/2020

12/22/2020 Service Returned Served (E-Filing)

Return of Service

Filed By: Elmore, Timothy
 File Stamp: 12/22/2020

01/05/2021 Appearance Filed

Appearance for Parwana Noorzad

For Party: Snap-on, Inc
 File Stamp: 01/05/2021

01/05/2021 Motion for Enlargement of Time Filed

Notice of Extension of Time

Filed By: Snap-on, Inc
 File Stamp: 01/05/2021

01/05/2021 Order Granting Motion for Enlargement of Time

Judicial Officer: Oakes, Timothy Wayne
 Order Signed: 01/05/2021

01/06/2021 Automated ENotice Issued to Parties

Order Granting Motion for Enlargement of Time ---- 1/5/2021 : Joseph Alan Beutel;Parwana Noorzad;Robert David Epstein

Financial Information

* Financial Balances reflected are current representations of transactions processed by the Clerk's Office. Please note that any balance due does not reflect interest that has accrued – if applicable – since the last payment. For questions/concerns regarding balances shown, please contact the Clerk's Office.

Elmore, Timothy

Plaintiff

Balance Due (as of 01/13/2021)

0.00**Charge Summary**

Description	Amount	Credit	Payment
Court Costs and Filing Fees	157.00	0.00	157.00

Transaction Summary

Date	Description	Amount
------	-------------	--------

Date	Description	Amount
11/20/2020	Transaction Assessment	157.00
11/20/2020	Electronic Payment	(157.00)

This is not the official court record. Official records of court proceedings may only be obtained directly from the court maintaining a particular record.

STATE OF INDIANA)	IN THE MARION COUNTY
)	SS: SUPERIOR COURT
COUNTY OF MARION)	CAUSE NO.:
)	
TIMOTHY ELMORE)	
)	
Plaintiff,)	
)	
v.)	
)	
SNAP-ON, INC)	
d/b/a SNAP-ON TOOLS)	
)	
Defendant.)	

SUMMONS

TO DEFENDANT: Snap-on, Inc.
2801 80th Street
Kenosha, Wisconsin 53143

You are hereby notified that you have been sued by the person named as Plaintiff (Petitioner) and in the Court indicated above.

The nature of the suit against you is stated in the Complaint, which is attached to this Summons. It also states the relief sought or the demand made against you by the Plaintiff.

An answer or other appropriate response in writing to the Complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by Plaintiff.

If you have a claim for relief against the Plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

DATED: 11/20/2020

Mylea A. Eldridge
Clerk of the Marion Superior Court

Robert D. Epstein
Attorney for Petitioner
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian Street, Suite 505
Indianapolis, IN 46204
(317) 639-1326

The following manner of service of Summons is hereby designated:

xxx Registered or certified mail.
____ Service on individual at above address.
____ Service on agent.
____ Service by publication.
____ Other: U.S. Mail



SHERIFFS RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served this summons on the _____ day of _____
20_____:

(1) By delivering a copy of the Summons and a copy of the Complaint to the defendant,
_____.

(2) By leaving a copy of the Summons and a copy of the Complaint at _____
_____, which is the dwelling place or usual place of abode of _____;
and by mailing a copy of said Summons to said defendant at the above address.

(3) Other Service or Remarks: _____
_____.

Sheriff's Costs

Sheriff

By: _____
Deputy

CLERKS CERTIFICATE OF MAILING

I hereby certify that on _____, I mailed a copy of
this Summons and a copy of the Complaint to the defendant, _____,
by _____ mail, requesting a return receipt, at the address furnished by
the plaintiff.

Clerk, Marion Superior Court

Dated _____

By: _____
Deputy

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that:

(1) The Summons and a copy of the Complaint mailed to defendant _____
was accepted by the defendant on _____.

(2) The attached return receipt was received by me showing that the Summons and a copy of
the Complaint mailed to defendant _____ was
accepted by _____ on behalf of said defendant on _____.

(3) The attached return receipt was received by me showing that the Summons and a copy of
the Complaint was returned not accepted on _____.

Clerk, Marion Superior Court

By: _____
Deputy

STATE OF INDIANA)	IN THE MARION COUNTY
)	SS: SUPERIOR COURT
COUNTY OF MARION)	CAUSE NO.:
)	
TIMOTHY ELMORE)	
)	
Plaintiff,)	
)	
v.)	
)	
SNAP-ON, INC)	
d/b/a SNAP-ON TOOLS)	
)	
Defendant.)	

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Timothy Elmore ("Elmore"), by counsel, and states for and as his complaint for damages against Snap-on, Inc. d/b/a Snap-on Tools ("Snap-on") as follows:

JURISDICTION, PARTIES & VENUE

1. Timothy Elmore is and was at all times relevant herein an individual residing in Marion County, Indiana at 1305 E. Markwood Ave, Indianapolis, IN 46227.
2. Snap-on is believed to be Wisconsin Corporation with its headquarters located at 2801 80th Street, Kenosha, Wisconsin 53143.
3. Accordingly, this Court has jurisdiction over the subject matter and parties to this action.
4. Marion County is the county of preferred venue pursuant to Indiana Trial Rule 75(A).

STATEMENT OF FACTS

5. Elmore was employed by Expedited Freight Systems, Inc. at its office located at 2501 Howard St, Indianapolis, IN 46221 at all time relevant herein (now located at 5751 Dividend Rd, Indianapolis, IN 46241). Elmore drove a truck and made deliveries to a variety of locations in various counties within Indiana.

6. On or about January 10, 2020, Elmore was making a delivery to 7425 Wellingshire Blvd, Indianapolis IN 46217.
7. The product that was to be delivered was packaged and sent to Expedited Freight Systems by Snap-on.
8. The product was on a large skid which was believed to measure about 30 inches in width by at about 96 inches in length and weighed approximately 1,070 pounds.
9. The product had been loaded onto an enclosed truck which was used by Expedited Freight to make deliveries.
10. While attempting to offload the Snap-on cargo from the truck which had been operated by Elmore, the box fell off the lift gate and fell on Elmore's leg, causing serious damage.
11. That as a result of this accident, Elmore sustained knee damage that required surgery.

COUNT 1: NEGLIGENCE

12. Elmore incorporates by reference the statements contained in paragraphs 1-11 above, as if fully set forth herein.
13. Snap-on owed a duty of due care to individuals who would handle pallets/skids including Elmore to be sure that its products are packaged in a safe manner to permit safe delivery of the product.
14. Snap-on was negligent in that they packaged a product in such a way that it was on an oversized skid and could be loaded and unloaded using a skid jack.
15. A safer alternative would have required the product to be loaded with a forklift onto a flatbed truck.
16. Snap-on's negligence was the direct and proximate cause of Elmore's injuries, including his medical expense, past and future pain and suffering, and loss of earnings.

COUNT II –PRODUCT LIABILITY

17. Elmore incorporates by reference the statements contained in paragraphs 1-16 above, as if fully set forth herein.
18. Elmore states the following under the Indiana Product Liability Act, Ind. Code § 34-20-1-1, et seq.
19. Elmore avers that Snap-on is liable for Elmore's physical injuries because Snap-on put into the stream of commerce a product in a condition unreasonably dangerous to Elmore.
20. At all relevant times, Snap-on sold and packaged the product to companies, knowing that the companies would employ drivers to deliver these products.
21. Snap-on sold and distributed the product to Expedited Freight Systems in a condition substantially similar to its condition when it was delivered by Elmore.
22. Elmore was in the class of persons that Snap-on should reasonably foresee as being subject to the harm caused by the defective condition
23. Elmore avers that Snap-on lacked proper labeling, packaging, and/or other warning methods to give reasonable warnings about the potential for harm associated with the use of the product.
24. The required warnings include but are not limited to a lack of warning to transporters including Elmore regarding the danger of attempting to load and unload the product from an enclosed truck.
25. Snap-on knew or should have known that this packaging and particular product created a high risk of bodily injury and serious harm like that suffered by Elmore.
26. The condition of the product was not contemplated by reasonable persons among those considered expected users or consumers of the product.

27. Adequate warnings should have been placed with product with clear instructions that the product should only be loaded onto and unloaded off of an open flatbed truck with a forklift.

28. Snap-on also failed to instruct Expedited Freight Systems and its employee, Elmore, that due to the dimensions and weight of the product, the product should only be loaded with a forklift into a flatbed truck and not an enclosed truck.

29. The product was capable of being made safe for its reasonably expected use and handling, if it had been designed, manufactured and packaged properly, including but not limited to requiring that the product should only be loaded with a forklift into a flatbed truck and not an enclosed truck.

30. Defendants breached their duty to Plaintiff by providing a product with design flaws and by failing to warn end users, and by failing to exercise due care under the circumstances.

31. As a direct and proximate result of Snap-on's strict liability from putting a defective product into the stream of commerce, and Snap-on's failure to exercise reasonable care in the packaging and providing warning and instructions for handling the product was the direct and proximate cause of Elmore's injuries, pain and suffering, and injury, including the need to for surgery.

WHEREFORE, Plaintiff, Timothy Elmore, respectfully prays for a judgment against Snap-on in an amount which will properly compensate him for his injuries as a proximate result of the negligence of the Defendant herein.

Respectfully Submitted,

EPSTEIN, COHEN, SEIF & PORTER

/s/ Robert D. Epstein

Robert D. Epstein (Atty. No. 6726-49)

Joseph Beutel (Atty. No. 35085-49)

EPSTEIN COHEN SEIF & PORTER

50 S. Meridian St., Suite 505

Indianapolis, Indiana 46204

Tel: 317-639-1326

Fax: 317-638-9891

Email: RDEpstein@aol.com

joe@beutellaw.com

STATE OF INDIANA)
)SS: IN THE MARION SUPERIOR COURT
COUNTY OF MARION) CAUSE NO. 49D02-2011-CT-041323

TIMOTHY ELMORE,)
)
 Plaintiff,)
)
 vs.)
)
SNAP-ON, INC. d/b/a)
SNAP-ON TOOLS,)
 Defendant.)

E-FILING APPEARANCE BY ATTORNEY IN CIVIL CASE

This Appearance Form must be filed on behalf of every party in a civil case.

1. The party on whose behalf this form is being filed is:

Initiating _____ Responding X Intervening _____; and

the undersigned attorney and all attorneys listed on this form now appear in this case for the following parties:

Name of party: SNAP-ON, INC.

Address of party (see Question #5 below if this case involved a protection from abuse order, a workplace violence restraining or, or a no-contact order)

Telephone # of party: _____

2. Attorney information for service as required by Trial Rule 5(B)(2):

Name:	<u>Parwana Noorzad</u>	Atty. Number:	<u>29412-49</u>
Address:	<u>135 N. Pennsylvania Street</u>	Phone:	<u>317-957-5000</u>
	<u>Suite 2400</u>	Fax:	<u>317-957-5010</u>
	<u>Indianapolis, IN 46204</u>		
Email:	<u>Parwana.Noorzad@quarles.com</u>		

IMPORTANT: Each attorney specified on this appearance:

- (a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as the date of this Appearance;
- (b) acknowledges that all orders, opinions, and notices from court in this matter that are served under Trial Rule 86(G) will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney; and
- (c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information current and accurate, see Ind. Admis. Disc. R 2(A).

Attorneys can review and update their Roll of Attorneys contact information on the Courts Portal at <http://portal.courts.in.gov>

3. This is a CT case type as defined in the administrative Rule 8(B)(3).
4. This case involved child support issues. Yes _____ No X (If yes, supply social security numbers for all family members on a separately attached document filed as confidential information on light green paper. Use Form TCM-TR3.1-4.)
5. This case involved a protection from abuse order, a workplace violence restraining order, or a no-contact order. Yes _____ No X (If yes, the initiating party must provide an address for the purpose of legal services but that address should not be one that exposes the whereabouts of a petitioner.) The party shall use the following address for purposes of legal service:

_____ Attorney's address

_____ The Attorney General Confidentiality program address (contact the Attorney General at 1-800-321-1907 or email address is confidential@atg.in.gov).

_____ Another address (provide)

This case involves a petition for involuntary commitment. Yes _____ No X

6. If Yes above, provide the following regarding the individual subject to the petition for involuntary commitment:

- (a) Name of the individual subject to the petition for involuntary commitment if it is not already provided in #1 above:

- (b) State of Residence of person subject to petition: _____
- (c) At least one of the following pieces of identifying information:
- i. Date of birth: _____
 - ii. Driver's License Number: _____
State where issued: _____ Expiration Date: _____
 - iii. State ID number: _____
State where issued: _____ Expiration Date: _____
 - iv. FBI number: _____
 - v. Indiana Department of Corrections Number: _____
 - vi. Social Security Number is available and is being provided in an attached confidential document Yes _____ No _____
7. There are related cases: Yes _____ No X (If yes, list on continuation page).
8. Additional information required by local rule:

9. There are other party members: Yes _____ No X (If yes, list on continuation page.)
10. This form has been served on all other parties and Certificate of Service is attached:
Yes X No _____

Respectfully submitted,

QUARLES & BRADY, LLP

/s/ Parwana Noorzad

Parwana Noorzad, #29412-49

QUARLES & BRADY LLP

135 North Pennsylvania Street, Suite 2400

Indianapolis, IN 46204

Phone: 317-957-5000

Fax: 317-957-5010

Parwana.Noorzad@quarles.com

Attorneys for Defendant,

SNAP-ON, INC.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *APPEARANCE* has been served on the 5th day of January, 2021 via the Court's electronic filing system to the following:

Robert D. Epstein
Joseph Beutel
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, Indiana 46204
Tel: 317-639-1326
Fax: 317-638-9891
Email: RDEpstein@aol.com
joe@beutellaw.com

/s/ Parwana Noorzad

Parwana Noorzad
QUARLES & BRADY LLP
135 N. Pennsylvania Street, Suite 2400
Indianapolis, IN 46204
Telephone: 317-399-2850
Facsimile: 317-957-5010
Parwana.Noorzad@quarles.com